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CONSTITUTIONAL LAW—TAXATION OF IMPORTS.—A suit was brought by the city of New York to collect taxes on the cash on hand and notes owned by a foreign corporation, doing business in the state as importers, which are the proceeds of the sale of imported goods in the original packages. It appears that the bulk of the proceeds of such sales is remitted to the home office, but the notes are held in New York for collection, and sufficient sums are there retained to meet the local expenses of the business and to pay the duties on subsequent importations. *Held*, that the tax does not violate U. S. Const., Art. I, Sec. 10, prohibiting taxation of imports by a state. *People of the State of New York, ex rel. Edward and John Burke, Limited, v. James L. Wells et al. as Commissioners of Taxes and Assessments of the City of New York* (1908), 28 Sup. Ct. Rep. 193.

The courts have held that under U. S. Constitution, Art. I, Sec. 10, a state cannot tax an article imported, the sale of the article nor the right of the importer to sell it. *Brown v. Maryland*, 12 Wheat. 419. This provision applies only to goods imported from foreign countries and not to goods transported from one state to another. *Brown v. Houston*, 114 U. S. 622. The right of the importer to sell the goods applies only to the sale in the original packages. *May v. New Orleans*, 178 U. S. 496; *Low v. Austin*, 13 Wall. 29. It would seem, therefore, that a state cannot tax the proceeds of the sale of imported goods which are in process of transmission to the home office. In the principal case the court considers the notes as representing an investment of money within the state, and under the authority of *Metropolitan Insurance Co. v. New Orleans*, 205 U. S. 395, they have obtained a business situs within the state, are subject to state laws, and taxable there. The money and notes assessed no longer represent the proceeds from the sale of imported goods, but are permanent capital invested there under the protection of the laws of New York.

CONTRACTS—ACCORD AND SATISFACTION—CONSIDERATION.—Defendants, principal and surety, executed a note for \$600, which was secured by a mortgage, in favor of W. Part payments were made on the note, and the executor of W. instituted foreclosure proceedings for the balance. The lower court instructed the jury that an agreement by W. to accept the payments in full satisfaction and discharge of the note would be no defense to a suit for the balance. *Held* (CHASE, J., dissenting), that the instruction was erroneous. *Frye v. Hubbell et al.* (1907), — N. H. —, 68 Atl. Rep. 325.

In the case of *Melroy et al. v. Kemmerer*, 218 Pa. St. 381, 67 Atl. 699, noted in 6 MICH. LAW REV., 169, it was held that a part payment of a debt combined with a promise by the debtor not to go into bankruptcy constituted a good consideration for the agreement by the creditor to accept it as a payment in full. The principal case seems to go one step further and to hold that a part payment, alone, if thus accepted by the creditor, discharges the debt. Thus the common law rule that such payment is no satisfaction because of the want of consideration is nearly, if not entirely, abrogated. The court says it is not true in modern times that there is no consideration, because such payment may be beneficial. Specific performance of such a contract will

not be enforced, but only an action for damages lies; in this action the costs allowed may not always equal the expenses of litigation, nor is interest always full recompense for delayed payment, nor is an execution always equivalent to money in hand. Therefore, since the reason for the old rule has ceased to exist, the rule itself, it is intimated, should no longer be given effect. This decision is far in advance of the majority of cases. Perhaps only one other court has gone to a similar extreme. *Clayton v. Clark*, 74 Miss. 499, 21 So. 565, 22 So. 189, 37 L. R. A. 771, 60 Am. St. Rep. 521. But a written receipt, if not a parol release, has been held sufficient to bind the creditor. *Dreyfus v. Roberts*, 75 Ark. 354, 87 S. W. 641, 69 L. R. A. 823, 112 Am. St. Rep. 67. However, it can only be conjectured how much weight was given in the principal case to the fact that it was fairly inferable that the debtor was insolvent. For further authority see the opinion in the principal case, which reviews decisions from *Pinnel's Case*, 5 Co. 117, 1 E. R. C. 368 (1602), to the present time, and 6 MICH. LAW REV., 169.

CORPORATIONS—LIABILITY OF BONDHOLDERS ON "BONUS STOCK."—The promoter and organizer of a corporation transferred his rights in certain unpatented devices and in an unwritten play to the corporation for nearly all of \$2,000,000.00 capital stock, part of which he turned back to the company for "promotion" purposes. The company later issued this stock as a bonus to subscribers for bonds, receiving for both the bonds and stock the face value of the bonds. The creditors seek to hold the bondholders for the amount of stock held by them, claiming it is unpaid. *Held*, that the stock is not full paid and bondholders are liable on the stock for its face value. *Gillett v. Chicago Title & Trust Co.* (1907), — Ill. —, 82 N. E. Rep. 891.

The opinion is based largely on the ground that the property for which the stock was issued was practically worthless, and that the overvaluation was so apparent as to make the transfer clearly fraudulent. See *Hastings Malting Co. v. Iron Range Brwg. Co.*, 65 Minn. 28, 67 N. W. 652. Where stock has been issued in exchange for property the tests used to determine whether the valuation has been a fair one have varied greatly. *State Trust Co. v. Turner*, 111 Iowa 664, 82 N. W. 1029. The tendency seems to be to look for fraud in the valuation rather than to rely solely on the actual value of the property. *Hospes v. Company*, 48 Minn. 174, 50 N. W. 1117; *Coleman v. Howe*, 154 Ill. 458, 39 N. E. 725. A tendency also prevails of recognizing a speculative value in property, dependent on the future success of the company. *Iron Co. v. Hays*, 165 Pa. St. 489, 30 Atl. 936; *N. H. H. N. Co. v. Company*, 142 Mass. 349, 7 N. E. 773; *Manhattan Trust Co. v. Seattle Coal, etc., Co.*, 19 Wash. 493; *Lake Superior Iron Co. v. Drexel*, 90 N. Y. 87. Where the valuation is not shown fraudulent the holder of the stock may transfer it to the corporation, which can then sell it at any price or give it away as bonus. *Davis Bros. v. Montgomery Furnace Co.*, 101 Ala. 127, 8 So. 496; *Pullman v. Railway Equipment Co.*, 73 Ill. App. 313; *Iron Co. v. Hays*, supra; *Otter v. Brevoort Petrol. Co.*, 50 Barb. 247; *John, etc., Land Co. v. Cooke*, 44 S. W. 391 (Ky.). But see *Kimball v. N. Eng., etc., Co.*, 69 N. H. 485; *Belknap v. Adams*, 49 La. Ann. 1350. The Supreme Court of the United